IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3864 OF 1998

Jagannath Madhav Tambat,
R/o. Nasik since deceased by
legal heirs and representatives

1. Smt. Indumati Jagannath Tambat
   age 59 years, Occ. housewhie,

2. Sudesh Jagannath Tambat,
   Age 36 years, Occ. service,

   Both Nos. 1 and 2 R/o. 10,
   Fitness Co-Op. Hsg. Society
   Dindori Road, Mhasrul,
   Nasik - 4.

3. Mrs. Sujata Niranjan Tambat,
   age 38 years, Occ. Housewife,
   R/o. 462, New Tambat Lane,
   Raviwar Peth, Nasik - 1.

4. Mrs. Swapna Ajay Kansara,
   Aged 28 years,
   Occ. Housewife,
   Ashirwad, Bhabha Nagar,
   Opp. Dr. Purohit Hospital,
   Nasik ...Petitioners

Versus

1. The State of Maharashtra,
   Through the Secretary,
   Social Welfare, Cultural
   Affairs and Sports
   Department, Mantralaya,
   Mumbai 400 032.

2. Director of Sports and)
Youth Services (M.S.))
Central Building,)
Pune.) ...Respondents

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Shri. N.V. Bandiwadekar, counsel for the Petitioners

Shri. S.K. Chincholikar, A.G.P. for Respondents.

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CORAM: DR. S. RADHAKRISHNAN AND SMT. V.K. TAHILRAMANI, JJ.

DATED: 30TH NOVEMBER, 2005

ORAL JUDGMENT (PER SMT. TAHILRAMANI, J.)

1. Heard the learned counsel for the Petitioner and the learned A.G.P. for Respondent Nos.1 and 2.

2. The Petitioner joined the services with the Central Government on 17.12.1963 as Junior National Defence Scheme (N.D.S.) Instructor, Grade-II. The said post was later on upgraded as Junior National Fitness Corps Instructor, Grade-I.

. In April, 1965 the Central Government decided to dis-centralise the National Fitness Corps Organisation and transferred the N.D.S. Instructors and supervisory staff working in the various

States/Union territories to respective State/Union Territory. Thereafter, the National Fitness Corps was decided to be closed down. Due to the above decision of the Central Government, the State Government took over the administrative control of the said Instructors/Supervisors w.e.f. 01.08.1972 by issuing Government Resolution. Thus, they came to be treated as State Government servants.

3. On 15.1.1973 the State Government issued G. R. to lay down the guide-lines for absorption of aforesaid Instructors/Supervisors in the graduates, S.S.C. passed and Non S.S.C. passed categories. The Petitioner fell in the non graduate category. The Instructors etc. were give option regarding pay-scale. As per the option, a person could opt for the scale as per the State Government or as per the Central Government scales. At the relevant time, the Central Government pay scale was Rs.110-200 and the State Government pay scale was Rs.120-220. The State Government pay scale being higher, the Petitioner opted for the State Government pay scale vide acceptance letter dated 14.10.1976. The same came to be accepted by the Respondent No.2 i.e. the Director of Sports and Youth Services (M.S.). This was

communicated to the Petitioner vide order dated 29.10.1976.

4. On 19.5.1986, the Central Government issued a letter to all the State Governments directing them to give benefit of the revision of pay scale as per the Third Pay commission with retrospective effect to all N.F.C. Instructors who had been absorbed in various State Government services. On the basis of this letter issued by the Central Government, the State Government issued G.R. regarding applying the new pay scale to N.F.C. Instructors and all N.F.C. Instructors were called upon to give option to accept the new pay scales as per Central Government or State Government pay scales. On the basis of the order of the Central Government, the State Government issued G.R. dated 05.01.1989 giving benefit of the same to all N.F.C. Instructors. On 27.1.1989 the State Government called upon the N.F.S. Instructors to exercise their options regarding revised pay scales. On account of revision of pay scale as recommended by the Third Pay Commission, the Central Government's pay scale was Rs.330-560 which was more than the State Government's pay scale which was Rs.290-540. Therefore, the Petitioner and others opted for the

Central Government’s pay scale.

5. There is no dispute regarding the fact that the Petitioner had opted for the pay scale as fixed by the Central Government. As the State Government issued a G.R. purporting to implement the recommendation made by Dr. Chattopadhaya National Commission for teachers, however, in respect of the Petitioner’s post, the pay scale to be given w.e.f. 01.11.1976 was stated as Rs.290-540 instead of Rs.330-560 and w.e.f. 01.01.1986 at Rs.1200-2040.

6. It is the case of the Petitioner that the Respondent No.1 totally ignored the fact that by G.R. dated 24.05.1989 and 05.01.1989, the pay scale of his post had been fixed at Rs.330-560 and hence, revision of pay scale was to be made on that basis. In view of this the Maharashtra State National Fitness Corps Employees Association, Nasik made a representation to the Government requesting to issue a corrigendum to the State Government Resolution, however, the said request came to be rejected. Being aggrieved thereby, the Petitioner filed Original Application before the Maharashtra Administrative Tribunal, at Mumbai (hereinafter referred to as "the Tribunal" for

the sake of brevity). However, the said application came to be dismissed by judgment and order dated 23.10.1997. The Petitioner filed Review Application which also came to be dismissed by order dated 02.03.1998. Being aggrieved by the judgment and orders dated 23.10.1997 and 02.03.1998, this petition has been preferred.

7. The Original Application and Revision Application came to be rejected on the ground that in 1976 the Petitioner had opted for the State Government's pay scale and in view of this, he was not entitled to exercise his option for Central Government's pay scale long after his absorption in the State Government's service.

8. It is true that the Petitioner in 1976 had opted for the State Government's pay scale but that was on account of the option being given to him which he rightfully exercised. Similarly, on 04.08.1988, the Central Government issued orders in respect of N.F.C. Instructors in the category in which the Petitioner fell i.e. N.F.C. Instructor Grade-I. In the said order, it is specifically stated that sanction has been granted by the President to grant of revised pay

scale as mentioned in the said order to N.F.C. Instructor absorbed in the State Government service and also payment of arrears out of fixation of pay as per the revised scales. Pursuant to the orders issued by the Central Government, the State Government issued G.R. dated 05.01.1989 in respect of N.F.C. Instructors who had been absorbed w.e.f. 01.11.1976. In the said G.R. it is specifically stated that the concerned N.F.C. Instructors would be given an opportunity to exercise the option for accepting new pay scales as per the Central Government or State Government scheme. It was further provided that the pay scale of the concerned persons would be fixed in accordance with the option given by him. Thus, it is seen that the option was given to the Petitioner and similarly situated persons and accordingly the option had been exercised by the Petitioner.

9. The very same G.R. makes it clear that it is referring to persons from N.F.C. who has been absorbed in the State Government service from 01.11.1976 and thereafter, the option has been given to them. In view of the clear option given to the Petitioner in the said G.R., it could not have been

held by the Tribunal that the Petition was not entitled to exercise his option for the Central Government's pay scale long after his absorption in the State Government's service. Despite the fact that the Petitioner had been absorbed in the State Government service a long time back, yet the G.R. dated 05.01.1989 gave option to the Petitioner for accepting the State Government pay scale or the Central Government pay scale. In view of the option the Petitioner had opted for the Central Government pay scale as it was higher than the State Government. Once the option had been given to the Petitioner, he cannot be stopped from exercising the option. On being given an option, the Petitioner had every right to opt for the pay scale of his choice. The said option was exercised by the Petitioner. No fault can be found with the Petitioner as he has exercised the option given to him by the Government. In the facts of this case, the fact that the Petitioner had earlier opted for the State Government's scale is immaterial. It cannot preclude him from exercising his option for the Central Government's scale at a later stage.

10. In view of the above, in our opinion, the

Judgment and orders dated 23.10.1997 and 02.03.1998 passed by the Tribunal deserve to be set aside and accordingly they are set aside. The Petitioner be granted pay scale as per the Central Government's pay scale i.e. Rs.330-560 from 01.11.1976 upto 31.12.1985 and of Rs.1200-2040 w.e.f. 01.01.1986. The pension of the Petitioner to be re-calculated accordingly and arrears to be paid. If any amount has been recovered from the Petitioner it will be refunded. The above be done by 31st March, 2006. Rule made absolute in terms of the above order. However, no order as to costs.

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